



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 13-1615]

Inflation Adjustment of Maximum Forfeiture Penalties

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document increases the maximum civil monetary forfeiture penalties available to the Commission under its rules governing monetary forfeiture proceedings to account for inflation. The inflation adjustment is necessary to implement the Debt Collection Improvement Act of 1996 (DCIA), which requires federal agencies to adjust “civil monetary penalties provided by law” at least once every four years.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kimbarly Taylor, Enforcement Bureau, Telecommunication Consumers Division, 202-418-1188.

SUPPLEMENTARY INFORMATION: This is a summary of the Order by the Commission, DA 13-1615, adopted on August 1, 2013, and released on August 1, 2013. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW, Washington, DC and also may be purchased from the Commission’s copy contractor, Best Copy and Printing, Inc., at (202) 488-5300, Room CY-B402, Portals II at 445 12th Street, SW, Washington, DC.

This Order amends §1.80(b) of the Commission’s rules, 47 CFR 1.80(b), to increase the maximum civil penalties established in that section to account for inflation since the last adjustment to these penalties. The adjustment procedure is set forth in detail in § 1.80(b)(9) of the Commission’s rules. That section implements the Debt Collection Improvement Act of 1996, 28 U.S.C. 2461 note, which requires federal agencies to adjust maximum statutory civil monetary penalties at least once every four years.

This Order adjusts the maximum penalties to account for the cost-of-living increase in the Consumer Price Index (CPI) between June of the year the forfeiture amount was last set or adjusted,¹ and June 2012. Once the cost-of-living adjustment is calculated for the relevant period, each existing maximum penalty is multiplied by the cost-of-living adjustment percentage. See 28 U.S.C. 2461 note 5(a). Each result is then rounded using the statutorily defined rules, which are set forth in the Commission’s rules at 47 CFR 1.80(b)(9)(ii).² Finally, the rounded result is added to the existing penalty

¹ Under the rounding rules set forth in § 1.80(b)(9)(ii), 47 CFR 1.80(b)(9)(ii), the inflationary adjustment for a statutory forfeiture amount must reach a specific threshold before the Commission may increase the maximum forfeiture amount. That adjustment is based on the difference between the CPI of “June of the preceding year” (here, June 2012) and that of June of the year a particular forfeiture was “last set or adjusted.” 47 CFR 1.80(b)(9)(i). Thus, different CPIs may be used to calculate the inflation factors for different statutory forfeitures, depending on when a particular forfeiture was last increased. Specifically, we calculate the difference between the CPI for June 2012 and: June 2011 (to adjust the penalties for 227(e) of the Communications Act of 1934, as amended (Communications Act or Act)), June 2010 (to adjust the penalties for Section 503(b)(2)(F)), June 2008 (to adjust the penalties for Sections 202(c), 203(e), 220(d), 223(b), 364(a), 386(a), 503(b)(2)(A), 503(b)(2)(B), 503(b)(2)(D), 506(a), and 634), June 2007 (to adjust the penalties for Section 503(b)(2)(C)), June 2004 (to adjust the penalties for Sections 205(b), 214(d), and 219(b)), and June 1997 (to adjust the penalties for Sections 364(b), 386(b), and 506(b)).

² Based on our application of the rounding rules, there are a number of penalties currently set forth in § 1.80(b) of the Commission’s rules that do not require adjustments for inflation at this time, including the penalties imposed pursuant to Sections 202(c), 203(e), 214(d), 219(b), 220(d), 227(e) (the amounts for a single violation or single day of a violation), 364(a) & (b), 386(a) & (b), 503(b)(2)(A) (the amount for a single violation or single day of a violation), 503(b)(2)(D) (the amount for a single violation or single day of a violation), 506(a) & (b), and 634 of the Act. We also do not alter the penalties imposed pursuant to Sections 6507(b)(4) and 6507(b)(5) of the Middle Class Tax Relief and Job Creation Act of 2012 because the Commission only implemented the Tax Relief Act in 2012. *See* Implementation of the Middle Class Tax Relief and Job Creation Act of 2012, 72 FR 71131, 71134 (November 29, 2012). Accordingly, the

amount to adjust each maximum monetary forfeiture penalty accordingly.³

Because Congress has mandated these periodic rule changes and the Commission is required to make them, we find that, for good cause, compliance with the notice and comment provisions of the Administrative Procedure Act is unnecessary. See 5 U.S.C. 553(b)(B).

Likewise, because a notice of proposed rulemaking is not required for these rule changes, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., does not apply.

Further, the Commission has analyzed the actions taken here with respect to the Paperwork Reduction Act of 1995 (PRA), and we find them to impose no new or modified information collection subject to the PRA. In addition, therefore, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission's actions do not impose any new or modified "information collection burden for small business concerns with fewer than 25 employees." See 44 U.S.C. 3506(c)(4).

only penalties adjusted in this order are those set forth in Sections 205(b), 223(b), 227(e) (for continuing violations), 503(b)(2)(A) (for continuing violations), 503(b)(2)(B), 503(b)(2)(C), 503(b)(2)(D) (for continuing violations), and 503(b)(2)(F).

³ Pursuant to the DCIA, § 1.80(b)(9) includes a note that specifies one further consideration: "[T]he first inflation adjustment [of a given penalty] cannot exceed 10 percent of the [existing] statutory maximum amount," 47 CFR 1.80(b)(9) note. The § 1.80(b)(9) note was inadvertently omitted from § 1.80(b) of the Commission's rules when the penalties in that section were previously adjusted. This order corrects that omission by reinserting the § 1.80(b)(9) note in the § 1.80 rules. Relevant to the § 1.80(b)(9) note requirement, there are three sets of penalties addressed in this order that the Commission has not previously adjusted for inflation: the penalties set forth in Section 227(e) of the Act (continuing violations), those set forth in Section 503(b)(2)(C) of the Act, and those set forth in Section 503(b)(2)(F) of the Act. With respect to Section 227(e), Section 503(b)(2)(C), and Section 503(b)(2)(F) of the Act, our adjustments do not exceed 10 percent of the existing statutory maximum forfeiture amounts.

The Commission will send a copy of this order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C.

801(a)(1)(A).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Penalties.

FEDERAL COMMUNICATIONS COMMISSION

David Kolker
Deputy Bureau Chief, Enforcement Bureau.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1---PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 79 et seq., 47 U.S.C. 151, 154(i) and (j), 155, 157, 225, 227, 303(r), and 309.

§ 1.80 [Amended]

2. Amend § 1.80 as follows:

- a. Revise paragraphs (b)(1) through (b)(4).
- b. Revise paragraph (b)(7).
- c. Redesignate the note to paragraph (b)(5) as note to paragraph (b)(8) and revise the third and fourth sentences of its introductory text.
- d. Revise the table in Section III of the note to paragraph (b)(8).
- e. Revise the fourth sentence in paragraph (b)(9)(i).
- f. Revise the table in paragraph (b)(9)(iii).
- g. Add note to paragraph (b)(9).

§ 1.80 Forfeiture proceedings.

* * * * *

(b) Limits on the amount of forfeiture assessed. (1) If the violator is a broadcast station licensee or permittee, a cable television operator, or an applicant for any broadcast or cable television operator

license, permit, certificate, or other instrument of authorization issued by the Commission, except as otherwise noted in this paragraph, the forfeiture penalty under this section shall not exceed \$37,500 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$400,000 for any single act or failure to act described in paragraph (a) of this section. There is no limit on forfeiture assessments for EEO violations by cable operators that occur after notification by the Commission of a potential violation. See section 634(f)(2) of the Communications Act. Notwithstanding the foregoing in this section, if the violator is a broadcast station licensee or permittee or an applicant for any broadcast license, permit, certificate, or other instrument of authorization issued by the Commission, and if the violator is determined by the Commission to have broadcast obscene, indecent, or profane material, the forfeiture penalty under this section shall not exceed \$350,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$3,300,000 for any single act or failure to act described in paragraph (a) of this section.

(2) If the violator is a common carrier subject to the provisions of the Communications Act or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the amount of any forfeiture penalty determined under this section shall not exceed \$160,000 for each violation or each day of a

continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$1,575,000 for any single act or failure to act described in paragraph (a) of this section.

(3) If the violator is a manufacturer or service provider subject to the requirements of section 255, 716, or 718 of the Communications Act, and is determined by the Commission to have violated any such requirement, the manufacturer or service provider shall be liable to the United States for a forfeiture penalty of not more than \$105,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$1,050,000 for any single act or failure to act.

(4) Any person determined to have violated section 227(e) of the Communications Act or the rules issued by the Commission under section 227(e) of the Communications Act shall be liable to the United States for a forfeiture penalty of not more than \$10,000 for each violation or three times that amount for each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$1,025,000 for any single act or failure to act. Such penalty shall be in addition to any other forfeiture penalty provided for by the Communications Act.

* * * * *

(7) In any case not covered in paragraphs (b)(1) through (b)(6) of this section, the amount of any forfeiture penalty determined under this section shall not exceed \$16,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$122,500 for any single act or

failure to act described in paragraph (a) of this section.

(8) * * *

Note to paragraph (b)(8): * * * The forfeiture ceilings per violation or per day for a continuing violation stated in section 503 of the Communications Act and the Commission's rules are described in § 1.80(b)(9). These statutory maxima became effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. * * *

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Section III. Non-Section 503 Forfeitures That Are Affected by the Downward Adjustment Factors

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| Violation | Statutory Amount (\$) |
|---|---|
| Sec. 202(c) Common Carrier Discrimination | \$9,600, 530/day. |
| Sec. 203(e) Common Carrier Tariffs | 9,600, 530/day. |
| Sec. 205(b) Common Carrier Prescriptions | 23,200. |
| Sec. 214(d) Common Carrier Line Extensions | 1,320/day. |
| Sec. 219(b) Common Carrier Reports | 1,320. |
| Sec. 220(d) Common Carrier Records & Accounts | 9,600/day. |
| Sec. 223(b) Dial-a-Porn | 80,000/day. |
| Sec. 227(e) | 10,000/violation. 30,000/day for each day of continuing violation, up to 1,025,000 for any single act or failure to act. |
| Sec. 364(a) Forfeitures (Ships) | 7,500 (owner). |

| | |
|---------------------------------|------------------------|
| Sec. 364(b) Forfeitures (Ships) | 1,100 (vessel master). |
| Sec. 386(a) Forfeitures (Ships) | 7,500/day (owner). |
| Sec. 386(b) Forfeitures (Ships) | 1,100 (vessel master). |
| Sec. 634 Cable EEO | 650/day. |

(9) * * *

(i) * * * Round off this result using the rules in paragraph (b)(9)(ii) of this section. * * *

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(iii) * * *

| U.S. Code citation | Maximum penalty after DCIA adjustment (\$) |
|------------------------|--|
| 47 U.S.C. 202(c) | 9,600 530 |
| 47 U.S.C. 203(e) | 9,600 530 |
| 47 U.S.C. 205(b) | 23,200 |
| 47 U.S.C. 214(d) | 1,320 |
| 47 U.S.C. 219(b) | 1,320 |
| 47 U.S.C. 220(d) | 9,600 |
| 47 U.S.C. 223(b) | 80,000 |
| 47 U.S.C. 227(e) | 10,000 30,000 1,025,000 |
| 47 U.S.C. 362(a) | 7,500 |
| 47 U.S.C. 362(b) | 1,100 |
| 47 U.S.C. 386(a) | 7,500 |
| 47 U.S.C. 386(b) | 1,100 |
| 47 U.S.C. 503(b)(2)(A) | 37,500 400,000 |
| 47 U.S.C. 503(b)(2)(B) | 160,000 1,575,000 |
| 47 U.S.C. 503(b)(2)(C) | 350,000 3,300,000 |
| 47 U.S.C. 503(b)(2)(D) | 16,000 122,500 |
| 47 U.S.C. 503(b)(2)(F) | 105,000 1,050,000 |
| 47 U.S.C. 507(a) | 750 |
| 47 U.S.C. 507(b) | 110 |

| | |
|---------------|-----|
| 47 U.S.C. 554 | 650 |
|---------------|-----|

Note to paragraph (b)(9): Pursuant to Public Law 104-134, the first inflation adjustment cannot exceed 10 percent of the statutory maximum amount.

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[FR Doc. 2013-19770 Filed 08/13/2013 at 8:45 am; Publication Date: 08/14/2013]